



HOWISON, THOMA & ARNOTT, LLP
PO BOX 741715
DALLAS, TX 75374-1715

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In re Application of
Philyaw
Application No. 09/491,142
Filed: January 26 2000
Attorney Docket No. PHL Y-24,910

OFFICE OF PETITIONS

ON PETITION

This decision concerns the May 6, 2003 petition under 37 CFR 1.137(a) to revive the above-referenced application. The petition alleges non-receipt of a certain PTO Office action and is being properly treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in this application.

The petition is **DISMISSED**.

On May 10, 2002, a non-final Office action was mailed ("5/10/02 Office Action"), setting forth a 3-month shortened statutory reply period. No response was received on or before August 12, 2002 (Monday) and no extension of time under 37 CFR 1.136(a) was obtained. The application was held abandoned as of August 11, 2002.¹

The instant petition alleges non-receipt of the 5/10/02 Office Action, implying that the application should not be held abandoned.

A grantable petition to withdraw the holding of abandonment, alleging non-receipt of an Office action which is the cause of the abandonment, must overcome a strong presumption that the Office action at issue, duly addressed and indicated as mailed, was timely delivered to the addressee.² The showing required to overcome this presumption consists of:³

- (1) a statement from the practitioner:
 - (A) stating that the Office action was not received by the practitioner;
 - (B) attesting, by referencing the docket record in (2) below, that a search of the relevant file jacket and docket records indicates that the Office action was not received; and

¹ Without any extension of time, the reply period ended 8/10/02, a Saturday. 37 CFR 1.7(a) permits submission of a proper response on 8/12/02. Failure to do so renders the application abandoned as of 8/11/02.

² 1156 OG 53 (Oct. 25, 1993). The 5/10/02 Office Action was mailed to counsel's current address.

³ *Id.*

- (2) a copy of the docket record where the allegedly non-received Office action would have been docketed had it been received.

The petition lacks items (1)(B) and (2), and is thus dismissed.

The holding of abandonment in this application is not withdrawn.

No petition fee is required for a petition under 37 CFR 1.181.

Finally, receipt with the petition of an "Amendment and Response to Office Action" is acknowledged.

A renewed §1.181 petition (no fee) **must** be filed within **TWO MONTHS** of the mailing date of this decision,⁴ and should be addressed as follows:

-by mail/by hand: Commissioner for Patents, USPTO
Attn: Office of Petitions
Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

-by fax: (703) 308-6916
Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang
Petitions Attorney
Office of Petitions

⁴ 37 CFR 1.181(f). The renewed petition should supply new evidence/new argument and not re-iterate any information/argument already contained in the instant petition.

Should the renewed §1.181 petition indicate that items (1)(B) and (2) cannot be supplied, it will be treated as a petition under 37 CFR 1.137(a). Receipt with the instant petition of a \$55 check for the §1.137(a) petition fee is acknowledged, and will be refunded if a renewed §1.181 petition is filed and granted.